

I. BACKGROUND

1. Plaintiff United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), filed a complaint in this action against defendant Kanaway Seafood Inc. d/b/a Alaska General Seafoods (“AGS”) pursuant to the Clean Water Act (“CWA”), 33 U.S.C. §§ 1251, *et seq.*

2. In its complaint, the United States alleged that AGS violated the terms of its National Pollutant Discharge Elimination System (“NPDES”) general permit issued pursuant to Section 402 of the CWA at its seafood processing facilities located in Ketchikan, Alaska (“Ketchikan Facility”).

3. The United States and AGS agree, and the Court finds by entering this Consent Decree, that this Decree has been negotiated in good faith, that implementation of this Decree will avoid prolonged and complicated litigation between the parties, and that this Decree is fair, adequate, reasonable, consistent with applicable law, and in the public interest.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED, AND DECREED that:

II. JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and the parties to this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and 33 U.S.C. §§ 1311, and 1319(b).

5. Venue is proper in this District under section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), and 1395(a).

6. Solely for the purposes of this Consent Decree and the underlying complaint, AGS waives all objections and defenses that it may have to the jurisdiction of this Court, venue in this District, or service of process. AGS shall not challenge the terms of this Consent Decree or this Court’s jurisdiction to enter and enforce this Consent Decree. AGS also agrees that the

complaint, filed concurrently with the lodging of this Consent Decree, states claims upon which relief may be granted against AGS.

III. PARTIES BOUND

7. This Consent Decree shall apply to and be binding upon the United States and upon AGS and its successors and assigns.

8. Any change in ownership, corporate status, or organizational form or status of AGS, including, without limitation, any sale or transfer of AGS's interests in or operating role with respect to its Ketchikan Facility, shall not in any manner alter AGS's responsibilities and obligations under this Consent Decree.

9. AGS shall be responsible for ensuring that all of its contractors, subcontractors, employees, or any other agents of AGS who are hired to conduct any activities or work related to this Consent Decree ("Work") comply with this Decree when conducting any such Work. In any action to enforce this Consent Decree, AGS shall not raise as a defense the failure by any of its officers, directors, agents, employees, successors, assigns, or contractors to take actions necessary to comply with this Decree.

10. AGS shall provide a copy of this Consent Decree to any proposed purchaser or transferee or successor in interest at least thirty (30) days prior to transfer of that interest, and simultaneously shall verify in writing to the EPA, in accordance with Section XV ("Notices"), that such notice has been given.

IV. DEFINITIONS

11. Unless otherwise specified, the terms in this Consent Decree shall have the same meaning as provided in the CWA, 33 U.S.C. §§ 1251, et seq., the corresponding regulations promulgated thereunder at 40 C.F.R. §122, Title 46 of the Alaska Statutes, the regulations

promulgated thereunder at 18 Alaska Administrative Code ("AAC") Part 70, and in AGS's NPDES Permit.

12. "Compliance Period" shall mean the period from the Effective Date of this Consent Decree until two years from the Effective Date.

13. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday or federal holiday. In computing any period of time under this Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business of the next working day.

14. "Discharge Season" shall mean the days of July, August, and September when AGS operates its Ketchikan Facility.

15. "Effective Date" shall be the effective date of this Consent Decree as provided in Paragraph 74.

16. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

17. "Ketchikan Facility" shall mean AGS's seafood processing facility located at 980 Stedman Street, Ketchikan, Alaska, and all related property, equipment, outfalls and facilities.

18. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

19. "Parties" shall mean the United States and AGS.

20. "Seafood processing waste" shall mean the organs, flesh, bones, eggs, and chitinous shells produced in the conversion of aquatic animals from a raw form to a marketable form, except for seafood processing wastewater and stickwater.

21. "Seafood processing wastewater" shall mean the wastewater that results from dewatering the seafood processing waste and is discharged through the Ketchikan Facility outfall.

22. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

23. "AGS's NPDES Permit" shall mean the National Pollutant Discharge Elimination System Permit No. AK-G52-0000, effective July 27, 2001, and any such NPDES permit which succeeds Permit No. AK-G52-0000 applicable to AGS.

24. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

V. GENERAL PROVISIONS

25. All activities undertaken by AGS pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal, state, and local laws, regulations and permits.

26. This Consent Decree is not, and shall not be construed to be, a permit, waiver or modification of any permit issued pursuant to any federal, state, or local law. This Decree does not relieve AGS of any obligation to apply for, obtain and comply with requirements of any new or existing NPDES permit.

VI. CIVIL PENALTY

27. Within seven (7) days after this Consent Decree is lodged with the Court, AGS shall deposit the civil penalty of \$110,000.00 into an interest bearing escrow account that AGS shall establish in a federally chartered bank. Within thirty (30) thirty days after the Effective Date of this Decree, the full amount in the escrow account, including all accrued interest, shall be

transferred to the United States in accordance with Section XVI ("Payments to the United States").

28. In the event that the civil penalty set forth in Paragraph 27 above is not paid within thirty (30) days after the Effective Date of this Consent Decree, AGS shall pay the civil penalty with interest from the thirtieth day after the Effective Date to the date of payment, at the statutory judgment rate set forth at 28 U.S.C. § 1961(a), and, if incurred, the costs of enforcement and collection pursuant to the Federal Debt Collection Procedure Act, 28 U.S.C. § 3001 et seq.

29. The United States shall be deemed a judgment creditor for purposes of collection of any penalties under this Decree.

VII. INJUNCTIVE RELIEF

Reduction of Seafood Processing Waste Discharges

30. Beginning on the initial day of the Discharge Season of 2004 and each Discharge Season thereafter during the Compliance Period, AGS shall barge its seafood processing waste to an approved, at-sea disposal site, or use an EPA-approved, alternative disposal method for seafood processing waste from its Ketchikan Facility so as to prevent the discharge or disposal of seafood processing waste into the waters of the Tongass Narrows at any time; however, this paragraph is not intended to prevent the application of the bypass exception of AGS's NPDES Permit (at Part VIII, F).

31. If AGS elects to use an alternative disposal method as allowed in Paragraph 30, within 120 days prior to the initial day of the Discharge Season of 2004 and of subsequent Discharge Seasons thereafter during the Compliance Period, AGS shall submit to the EPA for its approval a plan proposing an alternative disposal method ("Alternative Disposal Plan") and

explain in detail how the alternative will prevent the discharge or disposal of seafood processing waste into the waters of the Tongass Narrows and comply with all requirements of the CWA, 33 U.S.C. §§ 1251, et seq., the corresponding regulations promulgated thereunder at 40 C.F.R. §122, Title 46 of the Alaska Statutes, the regulations promulgated thereunder at 18 AAC Part 70, and AGS's NPDES Permit. Specifically, the Alternative Disposal Plan shall describe how the waste will be handled, stored, and processed; the pollutant loadings of any effluent resulting from the alternative disposal method; and any other impacts to the environment or local community, including air emissions, odor, or solid waste impacts.

32. Within thirty (30) days after submission of the Alternative Disposal Plan, the EPA will approve or disapprove the plan, and provide notice to AGS as to whether it may proceed with the alternative disposal method set forth in the plan or whether changes are necessary. Within twenty-one (21) days following receipt of a notice of disapproval of the Alternative Disposal Plan or direction to modify or change the Alternative Disposal Plan from the EPA (or within such longer time set forth in such notice), AGS shall submit a modified plan to the EPA in accordance with EPA's directions. Any stipulated penalties applicable to the submission shall accrue during the 21-day or otherwise specified period but shall not be payable if the EPA determines that AGS has complied with EPA's directions upon resubmission of the plan.

33. AGS shall submit progress reports to the EPA regarding its use of barging, or other EPA-approved, alternative disposal method within sixty (60) days of the last day of each Discharge Season, commencing with the 2004 Discharge Season through the end of the Compliance Period. Such progress reports shall include:

a. a narrative description of the activities undertaken during the relevant time period, including any supporting documents;

b. the total reduction in the discharge to Tongass Narrows of seafood processing waste from its Ketchikan Facility achieved by barging or using an alternate disposal method, if approved by the EPA for any Discharge Season subsequent to the 2003 Discharge Season;

c. an assessment of the effectiveness of the activities undertaken by AGS;
and

d. an accounting of the profits and costs of the activities, including capital costs, operation and maintenance costs, and labor costs.

Remediation of Existing Waste Piles in the Zone of Deposit

34. Within one hundred and twenty (120) days of the Effective Date of this Consent Decree, AGS shall submit a Remediation Plan to the EPA for its approval. The Remediation Plan shall include, but not be limited to, an analysis of (1) the effectiveness of the proposed remedy for eliminating or reducing the waste piles; (2) any difficulties likely to be encountered or limitations involved with the proposed remedy and measures AGS proposes to take to reduce or eliminate such difficulties or limitations; (3) the costs associated with the remedy; (4) the nature and extent (i.e., the duration and magnitude) of potential environmental impacts of the remedy, as well as any effects on the marine benthic community; and (5) the length of time for the proposed remedy to eliminate or reduce the size of each waste pile(s) to less than one acre. The Remediation Plan shall also provide any existing information on the waste pile(s), including, but not limited to, studies, monitoring data, dive videos, or dive surveys, whether or not conducted by or on behalf of AGS.

35. The EPA shall review the Remediation Plan and, within thirty (30) days of its receipt, notify AGS that the Remediation Plan is acceptable or indicate what modifications are

necessary to make the Remediation Plan acceptable. If the EPA requests modification, AGS shall revise the Remediation Plan accordingly and re-submit to the EPA within thirty (30) days of receipt of EPA's request.

36. Upon EPA's final approval of the Remediation Plan, AGS shall prepare a work plan, subject to the approval of the EPA, for conducting the remediation of the waste pile(s) ("Work Plan"). The Work Plan shall detail the steps that AGS will take to conduct the remediation and specify the dates within which AGS plans to conduct the remediation. The Work Plan shall include provision for pre-remediation and post-remediation dive surveys conducted in accordance with Section VI of AGS's NPDES Permit.

37. Within thirty (30) days of EPA's final approval of the Remediation Plan, AGS shall submit the proposed Work Plan to the EPA. Within thirty (30) days after submission of the Work Plan, the EPA will approve or disapprove the Work Plan, and provide notice to AGS as to whether it may proceed with the Work Plan or whether changes are necessary. Within fifteen (15) days following receipt of a notice of disapproval or direction to modify or change the Work Plan from the EPA (or within such longer time set forth in such notice), AGS shall submit a modified Work Plan to the EPA in accordance with EPA's directions. Any stipulated penalties applicable to the submission shall accrue during the 15-day or otherwise specified period but shall not be payable if the EPA determines that AGS has complied with EPA's directions upon resubmission of the Work Plan.

38. Upon written approval of the Work Plan by the EPA, AGS shall commence the remediation in accordance with the approved Work Plan and schedule set forth therein. The approved Work Plan shall be incorporated into and become enforceable under this Consent Decree. Any work conducted as part of the remediation must comply with all requirements of

the CWA, 33 U.S.C. §§ 1251, et seq., the corresponding regulations promulgated thereunder at 40 C.F.R. §122, Title 46 of the Alaska Statutes, the regulations promulgated thereunder at 18 AAC Part 70, and AGS's NPDES Permit.

39. Within thirty (30) days after the completion of the remediation of the waste piles, AGS shall submit to the EPA for its approval a final report regarding the implementation of the Remediation Plan, including all pre-remediation and post-remediation dive surveys and any other data required under the EPA-approved Work Plan. The final report shall be certified by AGS pursuant to Paragraph 44 herein.

40. AGS is solely responsible for fulfilling the requirements of Paragraphs 34-39 of this Consent Decree regarding the preparation and implementation of the Remediation Plan, and those requirements may not be satisfied, in whole or in part, by any waste pile study that the State of Alaska may authorize.

Remedy to Address Waste Pile Eruptions

41. AGS shall use those means necessary to prevent eruptions of the piles of seafood processing waste formed by discharges from its Ketchikan Facility into the waters of the Tongass Narrows. These pile eruptions create an eruption of gas and seafood processing waste, which cause a re-suspension of seafood processing wastes in the water column and/or on the water surface. Any means used to prevent these pile eruptions shall meet all requirements of the CWA, 33 U.S.C. §§ 1251, et seq., the corresponding regulations promulgated thereunder at 40 C.F.R. §122, Title 46 of the Alaska Statutes, the regulations promulgated thereunder at 18 AAC Part 70, and AGS's NPDES Permit.

42. AGS shall ensure that any activity taken to comply with Paragraph 41 ("eruption prevention activity") also meets the following conditions:

a. If, during any eruption prevention activity, floating seafood processing waste solids are observed beyond a one-hundred foot radius from the outfall, AGS must cease the activity immediately.

b. During each eruption prevention activity, and for three continuous days thereafter, AGS must conduct visual monitoring of the sea surface within six hundred feet up current and down current of AGS's Outfall and of the shoreline within six hundred feet on either side of the point on the adjacent shoreline(s) that corresponds (by straight line) to the location of AGS's Outfall. This visual monitoring must be conducted twice daily for at least thirty minutes. AGS must generate contemporaneous findings of the visual monitoring, and submit them to the EPA in a written report within thirty (30) days after the end of the Discharge Season. The written report shall include the level of the tides during which the eruption prevention activities occurred and shall identify the periods of time within which visual monitoring occurred. If AGS observes seafood processing waste on the shoreline or beyond the 100-foot mixing zone caused by the eruption prevention activity, it shall notify the EPA in writing within twenty-four (24) hours via facsimile.

c. If AGS receives any complaints regarding eruption prevention activities, AGS shall investigate and document the complaints, and submit all documentation related to those complaints and the result of AGS's investigation to the EPA via facsimile transmission and first class mail, within forty-eight (48) hours of receiving the complaint.

d. AGS shall conduct a dive survey within two weeks after the Discharge Season. This dive survey shall be conducted in accordance with Section VI.C. of AGS's NPDES Permit and shall measure the areal extent of all waste piles generated by the discharge of AGS's seafood processing waste. The report detailing the results of this dive survey shall be generated and

submitted to the EPA via facsimile transmission and first class mail within five business days of its completion or, if prepared by a third party, within ten (10) days of its submission to AGS.

43. Within sixty (60) days after the last day of each Discharge Season during the Compliance Period, AGS shall include in its progress report required pursuant to Paragraph 33, any documentation and/or written explanation of its compliance with Paragraphs 41-42 herein, including all steps taken to prevent seafood waste pile eruptions, as well as the date and time of any seafood waste pile eruptions, along with tide and production level at the time of the eruption.

IX. CERTIFICATION

44. Any document or report that AGS is required by this Consent Decree to submit to the EPA shall be signed by an official or authorized agent of AGS, and shall include the following certification:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and, to the best of my knowledge and belief, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

X. ACCESS

45. Starting on the date of AGS's signature on this Consent Decree, EPA inspectors or other agents or designees of the EPA may enter the Ketchikan Facility for purposes of conducting any activity related to this Consent Decree including, without limitation, assessing, monitoring, or verifying compliance with this Consent Decree, and verifying any data or information submitted by AGS pursuant to this Consent Decree. This right of access is in addition to, and shall not limit, any access rights afforded by any law, regulation, or permit.

46. AGS shall provide the United States, upon request, copies of all records, documents and information currently within or which come into AGS's possession or control and which

relate to factual information regarding the implementation of this Consent Decree, including, without limitation, reports, correspondence, or other documents or information related to the implementation of this Decree.

XI. FORCE MAJEURE

47. "Force Majeure" for the purposes of this Consent Decree is defined as an event arising from causes beyond the control of AGS, or of any entity controlled by AGS, including, but not limited to, its consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree, despite AGS's best efforts to fulfill the obligation. The requirement that AGS exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential Force Majeure event and best efforts to prevent and address the effects of any potential Force Majeure event (1) as it is occurring and (2) following the potential Force Majeure event, such that delay or prevention is minimized to the greatest extent possible. Force Majeure does not include unanticipated or increased costs or expenses associated with AGS's compliance with this Decree, changed financial circumstances of AGS, or the nonattainment of the requirements of this Decree. Notwithstanding any other provision in this Consent Decree, Force Majeure is not a defense to compliance with obligations imposed by the CWA, federal regulations, or applicable permits, even when those obligations are incorporated into this Consent Decree.

48. When circumstances are occurring or have occurred which may delay the completion or prevent performance of any requirement of this Consent Decree, whether or not due to a Force Majeure event, AGS shall so notify the EPA orally within 48 hours from the time that AGS knows, or in the exercise of reasonable diligence under the circumstances should have known, of the event causing the delay or anticipated delay or prevention of performance. Within

fifteen (15) days thereafter, AGS shall describe, in writing, to the EPA the basis for AGS's contention that it experienced a Force Majeure delay or prevention of performance, the anticipated length of the delay or prevention, the precise cause or causes of the delay or prevention, the measures taken or to be taken to prevent or minimize the delay or prevention, and the timetable by which those measures will be implemented. Failure to comply with the above requirements shall constitute a waiver of any claim of Force Majeure as to the event in question.

49. If the EPA finds that a delay in or prevention of performance is, or was, caused by a Force Majeure event, it shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event and stipulated penalties shall not be due for such period.

50. An extension of one compliance date based on a particular event shall not automatically extend another compliance date or dates. AGS shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought. AGS may petition for the extension of more than one compliance date in a single request.

XII. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of AGS that have not been disputed in accordance with this Section.

52. Any dispute arising under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between or among the Parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is extended by written agreement among the Parties. The dispute shall be considered to have arisen when one party sends the other party a written notice of dispute after notifying the other party by telephone. Except as provided below, any dispute that cannot be so resolved may be referred to the Court.

53. If a dispute between the Parties cannot be resolved by informal negotiations under Paragraph 52 above, then the position advanced by the United States shall be considered final and binding upon AGS unless, within ten (10) days after the end of the informal negotiation period, AGS files a petition with this Court setting forth the matter in dispute, the efforts made by the Parties to resolve it, and its proposed resolution. The United States shall have thirty (30) days to file a response to AGS's petition with an alternative proposal for resolution of the dispute. In proceedings on any dispute under this Paragraph, AGS shall bear the burden of demonstrating that its actions or positions taken are in accordance with and will ensure AGS's compliance with the terms, conditions, and requirements of this Decree, AGS's NPDES Permit, and the Clean Water Act and its implementing regulations.

54. The filing of a petition by AGS under this Section shall not extend, postpone or affect in any way any deadline or obligation of AGS under this Decree, including, without limitation, the timely submissions of any plans to the EPA. The payment of stipulated penalties with respect to any disputed matter shall be stayed pending resolution of dispute.

Notwithstanding the stay of payment, stipulated penalties shall still accrue from the first day of any failure or refusal to comply with any term or condition of this Decree. In the event that AGS

does not prevail on the disputed issue, stipulated penalties, if applicable, shall be assessed and paid as set forth in Section XIII (“Stipulated Penalties”). To the extent AGS shows that a delay or other noncompliance was due to a force majeure event or otherwise prevails on the disputed issue, stipulated penalties shall be reduced or excused, as appropriate.

XIII. STIPULATED PENALTIES

55. Except as provided in Section XI (“Force Majeure”), in the event AGS fails to comply with any requirement of this Consent Decree, including, without limitation, completion of the activities required under this Decree or any other plan approved pursuant to this Decree, including a SEP, within the applicable deadlines, AGS shall pay a stipulated penalty to the United States for each calendar day each such failure continues in the amounts set forth below:

<u>Number of Days of Non-Compliance</u>	<u>Stipulated Penalties Per Violation Per Day</u>
1 st day to 3 rd day	\$500.00
Each day beyond 3 days	\$1,000.00

56. Any stipulated penalty shall begin to accrue on the day after completed performance is due or on the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent simultaneous accrual of separate penalties for separate violations of this Consent Decree.

57. Following EPA’s determination that AGS has failed to comply with the requirements of this Consent Decree, EPA shall give AGS written notification of the same, describe the noncompliance, and demand payment of stipulated penalties for the noncompliance.

58. Within fifteen (15) calendar days of receipt of the notification of noncompliance from the EPA, AGS shall pay all stipulated penalties and accrued interest owed under this Consent Decree in accordance with Section XVI herein (“Payments to United States”). Penalties

shall accrue from the date of violation regardless of when the EPA has notified AGS of a violation.

59. Payment of stipulated penalties under this Consent Decree shall include interest accrued on the stipulated penalty amount from the date of the demand letter made pursuant to Paragraph 57 until the date stipulated penalties are paid. The amount of interest shall be determined using the rate established in accordance with 28 U.S.C. § 1961(a) applicable to the calendar year in which the demand letter is sent, and shall be compounded annually.

60. If AGS fails to pay stipulated penalties when due, the EPA may institute proceedings to collect the penalties and accrued interest.

61. The United States shall be deemed a judgment creditor for purposes of collection of stipulated penalties under this Decree.

62. The payment of stipulated penalties shall not alter or limit in any way AGS's obligations under this Consent Decree, or any federal or state law or regulations, or limit the authority of the United States to require compliance with such laws. The payment of stipulated penalties herein shall be in addition to any other remedies or sanctions available to the United States by reason of AGS's failure to comply with this Consent Decree, AGS's NPDES Permit, or the Clean Water Act and its regulations. Any decision by the EPA not to seek payment of a Stipulated Penalty shall not be deemed to be a waiver by the EPA of any future right to seek the payment of a later Stipulated Penalty based on a similar or repeated event.

63. Notwithstanding the schedule for stipulated penalties set forth herein, in the event the EPA issues a compliance order covering the terms of a particular NPDES permit violation, and AGS complies with that order, stipulated penalties shall not accrue for the period during which AGS complies with the order.

XIV. EFFECT OF DECREE AND RESERVATION OF RIGHTS

64. Payment of the civil penalty and performance of the other terms of this Decree shall constitute full satisfaction of the civil claims alleged in the Complaint. Nothing in this Decree shall be deemed an admission of liability.

65. Nothing in this Decree shall be construed to bar, alter, or limit the ability of the United States to pursue any legal or equitable, civil or criminal, judicial or administrative relief available to it to remedy any violation of the terms of this Decree, or any violation of the CWA, or other statute or regulation, except those violations specifically plead in the Complaint filed in this matter.

66. This Decree shall not limit the authority of the United States to exercise its independent information gathering authority under Section 308 of the CWA, 33 U.S.C. § 1318, or any other federal law or regulation.

67. This Decree shall not limit the authority of the United States to commence any action against any person, including AGS, in response to conditions which may present an imminent and substantial endangerment to the health of persons, the public health or welfare, or to the environment.

XV. NOTICES

68. Except as specified otherwise, all written notifications (including all reports, submissions and plans) or communications between the Parties shall be transmitted to the following addresses:

As to the United States Department of Justice:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division

U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044
Re: _____.

As to the EPA:

United States Environmental Protection Agency
Office of Water, OW-133
1200 Sixth Avenue
Seattle, Washington 98101
Attn.: Robert Grandinetti.

As to Regional Financial Management Officer:

United States Environmental Protection Agency
1200 Sixth Avenue
Seattle, Washington 98101.

As to AGS:

[name and address???

69. Any party, upon written notification to the other parties, may change the addresses to whom communications with that party shall be sent.

70. All notifications or communications shall be deemed submitted on the date they are postmarked and sent either by overnight mail service, or by certified or registered mail, return receipt requested.

XVI. PAYMENTS TO UNITED STATES

71. Any payment amount made to the United States below \$10,000.00 pursuant to the terms of this Consent Decree shall be paid by certified or cashier's check or checks made payable to the "U.S. Department of Justice," referencing the name and address of the party making the payment, USAO File Number _____ and DOJ Case Number _____. AGS shall send the check(s) to:

Office of the United States Attorney
Financial Litigation Unit-Room 253
222 W. 7th Avenue
Anchorage, AK 99513-7567.

72. Any payment amount made to the United States above \$10,000.00 pursuant to the terms of this Consent Decree shall be paid by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____ and DOJ Case Number _____. Payment shall be made by AGS in accordance with instructions provided to AGS by the Financial Litigation Unit of the United States Attorney's Office for the District of Alaska following lodging of this Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern time) will be credited on the next business day.

73. At the time of payment, AGS shall also send notice that payment has been made to the U.S. Department of Justice, the EPA, and the Regional Financial Management Officer, in accordance with Section XV ("Notices").

XVII. EFFECTIVE DATE

74. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court. Unless otherwise expressly provided herein, every provision of this Decree becomes operative and binding as of the Effective Date.

XVIII. TERMINATION

75. This Decree shall be subject to termination after AGS satisfies all requirements of this Decree, including payment of any stipulated penalties accrued under this Decree. At such time as AGS believes that it has fulfilled the requirements of this Decree, AGS shall so certify to

the EPA. If the EPA agrees with AGS's certification, then the parties shall jointly petition the Court for termination of this Decree.

XIX. RETENTION OF JURISDICTION

76. The Court retains jurisdiction over both the subject matter of this Consent Decree and AGS for the duration of the performance of the terms and provisions of this Decree to take any action necessary or appropriate for the interpretation, construction, execution, modification, implementation or enforcement of this Decree.

XX. MODIFICATION

77. The terms of this Decree may be modified only by a subsequent written agreement signed by all Parties signatory hereto, and approval of the Court.

XXI. COSTS OF SUIT

78. Each party to this action shall bear its own costs and attorneys' fees.

XXII. PUBLIC COMMENT

79. The parties agree and acknowledge that final approval by the United States and entry of this Decree are subject to the requirements of 28 C.F.R. § 50.7, which provides for a period of at least thirty (30) days for public notice of the lodging of this Decree in the Federal Register, an opportunity for public comment, and consideration of any comments. AGS consents to the entry of this Decree without further notice.

80. The United States reserves the right to withdraw its consent to this Decree if the public comments disclose facts, information, or considerations which indicate that the Decree is inappropriate, improper, inadequate, or not in the public interest.

81. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXIII. SIGNATORIES & SERVICE

82. The undersigned representative of AGS and, on behalf of the United States, the Section Chief of the Environmental Enforcement Section of the U.S. Department of Justice, certify that he or she is fully authorized by the party whom he or she represents to enter into the terms and conditions of , and to execute, this Decree and to bind legally such party to this Decree.

83. AGS agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree unless the United States has notified AGS in writing that it no longer consents to entry of the Decree.

84. AGS hereby agrees to accept service of process of the summons and complaint in this Action, and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons, and expressly waives any arguments or defenses to the contrary.

SO ORDERED this _____ day of _____, 20____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Kanaway Seafood Inc. d/b/a Alaska General Seafoods.

FOR THE UNITED STATES OF AMERICA

Date: 1/7/04

CATHERINE R. McCABE
Deputy Section Chief
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, DC 20044-7611

REGINA R. BELT
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
801 B. Street, Suite 504
Anchorage, Alaska 99501-3657

Date: _____

JACKSON L. FOX
Regional Counsel, Region 10
U.S. Environmental Protection Agency
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FOR DEFENDANT KANAWAY SEAFOOD INC. *AA*

Date: 12.08.03

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